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10/057,436	01/25/2002	Atanas Stoyanov	064754-0012	9655
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MCDERMOTT WILL & EMERY LLP			CHANDLER, SARA M	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/057,436	STOYANOV ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	SARA CHANDLER	3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 December 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-6 and 45-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-6 and 45-59 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/24/09</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Response to Amendment***

This Office Action is responsive to Applicant's arguments and request for reconsideration of application 10/057,436 (01/25/02) filed on 12/24/08.

### ***Claim Interpretation***

1. In determining patentability of an invention over the prior art, all claim limitations have been considered and interpreted as broadly as their terms reasonably allow. See MPEP § 2111.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Pruter*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See MPEP § 2111.

2. All claim limitations have been considered. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art. See MPEP 2106 II C. The following language is interpreted as not further limiting the scope of the claimed invention. See MPEP 2106 II C.

Language in a method claim that states only the intended use or intended result, but the expression does not result in a manipulative difference in the steps of the claim. Language in a system claim that states only the intended use or intended result, but does not result in a structural difference between the claimed invention and the prior art.

In other words, if the prior art structure is capable of performing the intended use, then it meets the claim.

Claim limitations that contain statement(s) such as “*if, may, might, can could*”, as optional language. As matter of linguistic precision, optional claim elements do not narrow claim limitations, since they can always be omitted.

Claim limitations that contain statement(s) such as “*wherein, whereby*”, that fail to further define the steps or acts to be performed in method claims or the discrete physical structure required of system claims.

USPTO personnel should begin claim analysis by identifying and evaluating each claim limitation. For processes, the claim limitations will define steps or acts to be performed. For products, the claim limitations will define discrete physical structures or materials. Product claims are claims that are directed to either machines, manufactures or compositions of matter. See MPEP § 2106 II C.

The subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:

- (A) statements of intended use or field of use,
- (B) “adapted to” or “adapted for” clauses,
- (C) “wherein” clauses, or
- (D) “whereby” clauses.

See MPEP § 2106 II C.

3. Independent claims are examined together, since they are not patentable distinct. If applicant expressly states on the record that two or more independent and distinct

inventions are claimed in a single application, the Examiner may require the applicant to elect an invention to which the claims will be restricted.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, US Pub. No. 2002/0107765 in view of "CarsDirect.com to Offer Breakthrough Multi-Lender Finance Service" by Business Editors/Online Retail Writers. Business Wire. New York: October 16, 2000. (hereinafter CarsDirect.com).

**Re Claims 4,5 and 6:**

Base Device

Walker discloses a method/system/computer readable medium for selecting and communicating which of a plurality of retail finance programs generates a highest calculated profit amount for a particular vehicle, comprising:

receiving financial data associated with a customer in a computer system as an input (Walker, abstract, Figs. 1,2, [0037][0047] [0063]);

receiving information about the vehicle in the computer system as an input (Walker, Figs.1,2, [0048][0064]);

accessing a database stored in the a-computer system, the database comprising information about a plurality of retail finance programs (Walker, Figs.,1,2, [0024][0037][0047][0048]);

calculating a profit amount for each of the plurality of retail finance programs for the vehicle with software in the computer system handling the financial data and the information about the vehicle as constraints (Walker, Figs. 1,2, [0002][0004][0006][0007][0008][0032] [0040][0050][0065][0066][0074]);

comparing the calculated profit amounts (Walker, Figs. 1,2, [0002][0004][0006][0007][0008][0032] [0040][0050][0065][0066][0074]);

selecting which of the plurality of retail finance programs has the highest calculated profit amount based on the comparing (Walker, Figs. 1,2, [0002][0004][0006][0007][0008][0032] [0040][0050][0065][0066][0074]);

communicating to a user through a user interface which of the plurality of retail finance programs has the highest calculated profit amount (Walker, Figs. 1,2, [0002][0004][0006][0007][0008][0032] [0040][0050][0065][0066][0074]); and

reporting and displaying which of the plurality of retail finance programs has the highest calculated profit amount based on the comparing (Walker, Figs. 1,2, [0002][0004][0006][0007][0008][0032] [0040][0050][0065][0066][0074]).

Walker fails to explicitly disclose:

receiving a target monthly payment amount in the computer system as an input; and

calculating a profit amount for each of the plurality of retail finance programs for the vehicle with software in the computer system given the amount of the target monthly payment and handling the financial data and the information about the vehicle as constraints.

Known technique

CarsDirect.com discloses:

receiving a target monthly payment amount in the computer system as an input (CarsDirect.com, pgs., 2-3); and

calculating a profit amount for each of the plurality of retail finance programs for the vehicle with software in the computer system given the amount of the target monthly payment and handling the financial data and the information about the vehicle as constraints (CarDirect.com, pgs. 2-3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker by adopting the teachings of CarsDirect.com to provide receiving a target monthly payment amount in the computer system as an input; and calculating a profit amount for each of the plurality of retail finance programs for the vehicle with software in the computer system given the amount of the target monthly payment and handling the financial data and the information about the vehicle as constraints;

As suggested by Walker, there is an interest in considering what is in the best for the consumer as well as the dealership. Furthermore, as Walker suggests some programs or vehicles may incompatible with a customers financial circumstances. As suggested by CarsDirect.com, it is advantageous to select programs that consider the customer's financial situation.

Furthermore, the claimed invention applies a known technique (e.g., Evaluating a plurality of loan/lease programs by factoring in the financial situation of the customer such as their ability to afford a monthly payment amount and their ability to pay a cash down payment as described by CarsDirect.com) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device as described by Walker) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claims 45,46 and 47:** Walker in view of CarsDirect.com discloses the claimed invention supra and CarsDirect.com further discloses receiving an amount of cash available from the customer for an initial payment in the system as an input, and wherein the calculating the profit amount also is done given the amount of available cash (CarDirect.com, pgs. 2-3).

**Re Claims 48,52 and 56:** Walker in view of CarDirect.com discloses the claimed invention supra and CarsDirect.com further discloses wherein the calculating the profit amount for each of the plurality of retail finance programs for the vehicle maximizes the amount of profit that can be generated by each of the retail finance programs given the

amount of the target monthly payment and handling the financial data and the information about the vehicle as constraints (CarDirect.com, pgs. 2-3).

**Claims 49,53 and 57** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of CarsDirect.com as applied to claims 48,52 and 56 above, and further in view of "Vehicle price varies with financing; [Final Edition]," by Joy Clarke. The Ottawa Citizen. Ottawa, Ont.: Apr 2, 1999. pg. F.8. (hereinafter Clarke)

**Re Claims 49,53 and 57:** Walker in view of CarsDirect.com disclose the claimed invention supra and but fail to explicitly disclose wherein the information about the vehicle includes its sales price and wherein the maximizing includes increasing the sales price of the vehicle.

Known technique

Clarke discloses wherein the information about the vehicle includes its sales price and wherein the maximizing includes increasing the sales price of the vehicle (Clarke, pgs. 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker and CarsDirect.com by adopting the teachings of Clarke to provide wherein the information about the vehicle includes its sales price and wherein the maximizing includes increasing the sales price of the vehicle.

As suggested by Walker, a business would have been motivated to provide customers with the financing program that is the most lucrative from their perspective.

Furthermore, the claimed invention applies a known technique (e.g., Changing the price of a vehicle depending on the financing program chosen as described by Clarke) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device as described by Walker and CarsDirect.com) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Claims 50,51,54,55,58 and 59** are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of CarsDirect.com as applied to claims 48,52 and 56 above, and further in view of "Car's price just part of the deal," Tampa Tribune. Tampa, Fla.: Sep. 18, 1997. (hereinafter Tampa Tribune).

**Re Claims 50,54 and 58:** Walker in view of CarsDirect.com disclose the claimed invention supra but fail to explicitly disclose wherein the information about the vehicle includes its sales price and wherein the maximizing includes making an upward adjustment in the sales price of a profit source other than the sales price of the vehicle.

#### Known Technique

Tampa Tribune discloses wherein the information about the vehicle includes its sales price and wherein the maximizing includes making an upward adjustment in the sales price of a profit source other than the sales price of the vehicle (Tampa Tribune, pgs. 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker and CarsDirect.com by adopting

the teachings Tampa Tribune to provide wherein the information about the vehicle includes its sales price and wherein the maximizing includes making an upward adjustment in the sales price of a profit source other than the sales price of the vehicle.

As suggested by Tampa Tribune, businesses would have been motivated to push products and services such as warranties or service contracts to increase profits.

Furthermore, the claimed invention applies a known technique (e.g., Offering products and services such as warranties or service contracts to increase profits as described by the Tampa Tribune) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device as described by Walker and CarsDirect.com) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

**Re Claims 51,55 and 59:** Walker in view of CarsDirect.com disclose the claimed invention supra but fail to explicitly disclose wherein the profit source other than the sales price is a warranty.

#### Known Technique

Tampa Tribune discloses wherein the profit source other than the sales price is a warranty (Tampa Tribune, pgs. 1-2)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker and CarsDirect.com by adopting

the teachings of Tampa Tribune to provide wherein the profit source other than the sales price is a warranty.

As suggested by Tampa Tribune, businesses would have been motivated to push products and services such as warranties or service contracts to increase profits. Furthermore, the claimed invention applies a known technique (e.g., Offering products and services such as warranties or service contracts to increase profits as described by the Tampa Tribune) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device as described by Walker and CarsDirect.com) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

### ***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues the prior art teaches away.

In response to applicant's arguments, it is noted:

Reference disclosure must be evaluated for all that it fairly suggests and not only for what is indicated as preferred. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "

Applicant argues, Walker in view of CarsDirect.com fails to explicitly disclose "using a target monthly payment as a criteria for identifying the most profitable finance program."

The claimed invention applies known techniques (e.g., Evaluating a plurality of loan/lease programs by factoring in the financial situation of the customer such as their ability to afford a monthly payment amount and their ability to pay a cash down payment as described by CarsDirect.com) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device analyzing which, of a plurality of options, is the best loan or lease for the consumer and the dealership as described by Walker) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

As suggested by Walker, there is an interest in considering what is in the best for the consumer as well as the dealership. Furthermore, as Walker suggests some programs or vehicles may incompatible with a customers financial circumstances. As suggested by CarsDirect.com, it is advantageous to select programs that consider the customer's financial situation.

Applicant argues, that because CarsDirect.com considers the car buyer's financial situation it necessarily teaches away from the consideration of a target monthly payment amount and cash down payment. Applicant further argues that it teaches away from profit maximization.

This is incorrect. As suggested by Walker, there is an incentive to find the program that best meets the needs of both the consumer and the dealership. For example, providing a customer with a program having a high monthly payment that the customer's income and credit would not support would not be profitable for the

dealership because the customer would be unable to pay. On the other hand, a loan program that extended the duration of the loan could still be profitable for the dealership while increasing the likelihood of payment by the customer because the monthly payments were lower. Similarly, a loan program with a huge cash downpayment requirement would not be profitable if the customer did not have the financial resources to pay it. Customer financing programs for practical reasons would need to consider these factors because a seller can propose any terms they want but, if the terms of the programs do not allow for any qualified buyers it would still be ineffective and unprofitable.

Applicant argues, knowledge that the gross profit margin can be increased by increasing the sales price as suggested by Clarke in no way suggests that it should be.

Clarke discloses wherein the information about the vehicle includes its sales price and wherein the maximizing includes increasing the sales price of the vehicle (Clarke, pgs. 1-2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker and CarsDirect.com by adopting the teachings of Clarke to provide wherein the information about the vehicle includes its sales price and wherein the maximizing includes increasing the sales price of the vehicle.

As suggested by Walker, a business would have been motivated to provide customers with the financing program that is the most lucrative from their perspective. Furthermore, the claimed invention applies a known technique (e.g., Changing the price

of a vehicle depending on the financing program chosen as described by Clarke) to a known device (i.e., method/system/computer readable medium) ready for improvement (e.g., Electronic financing device as described by Walker and CarsDirect.com) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Applicant argues, that Tampa Tribune fails to suggest making an upward adjustment in the sales price of a profit source and that the profit source may be a warranty.

Tampa Tribune discloses wherein the profit source other than the sales price is a warranty (Tampa Tribune, pgs. 1-2)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Walker and CarsDirect.com by adopting the teachings of Tampa Tribune to provide wherein the profit source other than the sales price is a warranty.

As suggested by Tampa Tribune, businesses would have been motivated to push products and services such as warranties or service contracts to increase profits. Tampa Tribune further suggests these prices are highly negotiable because they are packed with so much profit.

Furthermore, the claimed invention applies a known technique (e.g., Offering products and services such as warranties or service contracts to increase profits as described by the Tampa Tribune) to a known device (i.e., method/system/computer

readable medium) ready for improvement (e.g., Electronic financing device as described by Walker and CarsDirect.com) to yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARA CHANDLER whose telephone number is (571)272-1186. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMC  
/JAGDISH N PATEL/  
Primary Examiner, Art Unit 3693